UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, U. S. Department of Justice Antitrust Division Litigation II Section 1401 H Street, N.W., Suite 3000 Washington, D.C. 20005, Plaintiff, v. CLEAR CHANNEL COMMUNICATIONS, INC. 200 Concord Plaza, Suite 600 San Antonio, Texas 78216 and AMFM INC. 1845 Woodall Rodgers Freeway Suite 1300 Dallas, Texas 75201, Defendants.	)	Civil Action No.: JUDGE: Filed:

COMPLAINT FOR INJUNCTIVE RELIEF

The United States of America, acting under the direction of the Attorney General of the United States, brings this action to enjoin the proposed merger between Clear Channel Communications, Inc. ("Clear Channel") and AMFM Inc.

("AMFM"), and to obtain other relief as appropriate. The United States alleges as follows:

1. On October 2, 1999, Clear Channel and AMFM entered into a an Agreement and Plan of Merger, worth approximately $23.8 billion, in which Clear Channel would merge with AMFM. The United States seeks to enjoin this transaction because its effect would be to lessen competition substantially in the provision of radio advertising time, as well as in the provision of out-of-home advertising services, in the United States.

2. Clear Channel and AMFM are two of the three largest operators of broadcast radio stations in the United States. Clear Channel's and AMFM's radio stations compete head-to-head against one another for the business of local and national companies seeking to advertise on radio stations in Allentown, Pennsylvania; Denver, Colorado; Harrisburg, Pennsylvania; Houston, Texas; and Pensacola, Florida.

3. In addition, Clear Channel, through its subsidiary, Eller Media Company ("Clear Channel/Eller"), is a major provider of out-of-home advertising of various types, including billboards and bulletins. AMFM has an approximate 28.6 percent equity interest in Lamar Advertising Company ("Lamar"), another major provider of out-of-home advertising that competes directly with Clear Channel/Eller.

Clear Channel/Eller and Lamar compete vigorously in out-of-home advertising in numerous markets across the country.

4. Unless blocked, Clear Channel's merger with AMFM would substantially lessen competition, and would result in many advertisers paying higher prices for radio advertising time and for out-of-home-advertising, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

I. JURISDICTION AND VENUE

5. This action is filed by the United States under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain defendants from violating Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

6. Clear Channel and AMFM sell radio advertising, a commercial activity that substantially affects, and is in the flow of, interstate commerce. The Court has subject matter jurisdiction over this action and jurisdiction over the parties pursuant to 15 U.S.C. §§ 22 and 25, and 28 U.S.C. §§ 1331 and 1337.

7. AMFM transacts business and is found in the District of Columbia. Clear Channel has consented to the United States's assertion that venue in this District is proper. Venue is therefore proper in this Court pursuant to 28 U.S.C. § 1391(b) and (c).

II. THE DEFENDANTS AND THE TRANSACTION

8. Clear Channel, with headquarters in San Antonio, Texas, is one of the three largest radio broadcast companies in the United States in terms of revenue. In 1999, Clear Channel reported television and radio broadcast net revenues of approximately $1.4 billion. Clear Channel, through its wholly owned subsidiary, Eller Media Company, is one of the largest providers of out-of-home advertising services (such as billboard advertising) in the United States. In 1999, Eller had revenues in excess of $1.25 billion.

9. AMFM, with headquarters in Dallas, Texas, is also one of the three largest radio broadcast companies in the United States in terms of revenues. In 1999, AMFM reported radio group net revenues of approximately $1.7 billion. In addition, AMFM owns approximately 28.6 percent of the total outstanding securities of Lamar, giving it some rights to participate in the operation of Lamar, including representation on Lamar's Board of Directors. Lamar provides out-of-home advertising in many markets across the country. In 1999, Lamar had revenues of approximately $444 million.

10. On October 2, 1999, Clear Channel and AMFM entered into an Agreement and Plan of Merger, worth approximately $23.8 billion, that would create the largest radio broadcast company in the United States. Attempting to resolve the United States Department of Justice's competitive concerns, prior to the

filing of this Complaint, Clear Channel and AMFM sold 85 radio stations in 24 markets. These stations were purchased by buyers who will compete against Clear Channel after the merger, thereby restoring much of the competition that would be lost as a result of their merger. Clear Channel and AMFM, however, did not sell (or did not sell a sufficient number of) radio stations in the Overlap Radio Areas, identified in Paragraph 11, below, to remediate all of the anticompetitive effects arising from the merger.

III. RADIO ADVERTISING TIME

A. Relevant Product Market

11. Radio advertising time is sold by radio stations directly or through their national representatives. Radio stations in the Allentown, Denver, Harrisburg, Houston, and Pensacola Metro Survey Areas ("the Overlap Radio Areas") generate almost all of their revenues from the sale of advertising time to local and national advertisers. A Metro Survey Area ("MSA") is the geographical unit for which Arbitron, a company that surveys radio listeners, furnishes radio stations, advertisers, and advertising agencies in a particular area with data to aid in evaluating radio audience size and composition.

12. Many local and national advertisers purchase radio advertising time in the Overlap Radio Areas because they find such advertising preferable to advertising in other media to meet their specific needs. Reasons for this include the fact that

radio advertising time may be more cost-efficient than other media at reaching the advertiser's target audience (individuals most likely to purchase the advertiser's products or services). Radio may also reach certain target audiences that cannot be reached as effectively through other media. Additionally, radio stations render certain services or promotional opportunities to advertisers that they cannot exploit as effectively using other media.

13. Although some local and national advertisers may switch some of their advertising to other media rather than absorb a price increase in radio advertising time, the existence of such advertisers would not prevent all radio stations in each of the Overlap Radio Areas from profitably raising their prices a small but significant amount. At a minimum, stations could profitably raise prices to those advertisers who view radio as a necessary advertising medium for them, or as a necessary advertising complement to other media. Radio stations negotiate prices individually with advertisers; consequently, radio stations can charge different advertisers different prices. Radio stations generally can identify advertisers with strong radio preferences. Because of this ability to price discriminate among customers, radio stations may charge higher prices to advertisers that view radio as particularly effective for their needs, while maintaining lower prices for other advertisers.

14. Thus, the provision of advertising time on radio stations in the Overlap Radio Areas is a relevant product market within the meaning of Section 7 of the Clayton Act.

B. Relevant Geographic Markets

15. *Radio Advertising Time in Allentown is a Relevant Market.* The relevant geographic market for local and national advertisers who buy advertising time on the Clear Channel and AMFM radio stations in Allentown is the Allentown MSA. The Allentown MSA includes: Carbon; Lehigh; and Northampton Counties in Pennsylvania, as well as Warren County, New Jersey. Local and national advertising that is placed on radio stations in the Allentown MSA is aimed at reaching listening audiences in the Allentown MSA, and other radio stations do not provide effective access to these audiences. Thus, if there were a small but significant and non-transitory increase in radio advertising prices within the Allentown MSA, advertisers would not switch enough advertising time purchases to other radio stations to render the price increase unprofitable.

16. *Radio Advertising Time in Denver is a Relevant Market.* The relevant geographic market for local and national advertisers who buy advertising time on the Clear Channel and AMFM radio stations in Denver is the Denver, Colorado MSA. The Denver MSA includes: Adams; Arapahoe; Boulder; Denver; Douglas; and Jefferson Counties. Local and national advertising that is placed on radio stations in

the Denver MSA is aimed at reaching listening audiences in the Denver MSA, and other radio stations do not provide effective access to these audiences. Thus, if there were a small but significant and non-transitory increase in radio advertising prices within the Denver MSA, advertisers would not switch enough advertising time purchases to other radio stations to render the price increase unprofitable.

17. *Radio Advertising Time in Harrisburg is a Relevant Market.* The relevant geographic market for local and national advertisers who buy advertising time on the Clear Channel and AMFM radio stations in Harrisburg is the Harrisburg, Pennsylvania MSA. The Harrisburg MSA includes: Cumberland; Dauphin; Lebanon; and Perry Counties. Local and national advertising that is placed on radio stations in the Harrisburg MSA is aimed at reaching listening audiences in the Harrisburg MSA, and other radio stations do not provide effective access to these audiences. Thus, if there were a small but significant and nontransitory increase in radio advertising prices within the Harrisburg MSA, advertisers would not switch enough advertising time purchases to render the price increase unprofitable.

18. *Radio Advertising Time in Houston is a Relevant Market.* The relevant geographic market for local and national advertisers who buy advertising time on the Clear Channel and AMFM radio stations in Houston is the Houston, Texas MSA. The Houston MSA includes: Brazoria; Chambers; Fort Bend;

Galveston; Harris; Liberty; Montgomery; and Waller Counties. Local and national advertising that is placed on radio stations in the Houston MSA is aimed at reaching listening audiences in the Houston MSA, and other radio stations do not provide effective access to these audiences. Thus, if there were a small but significant and non-transitory increase in radio advertising prices within the Houston MSA, advertisers would not switch enough advertising time purchases to other radio stations to render the price increase unprofitable.

19. *Radio Advertising Time in Pensacola is a Relevant Market.* The relevant geographic market for local and national advertisers who buy advertising time on the Clear Channel and AMFM radio stations in Pensacola is the Pensacola, Florida MSA. The Pensacola MSA includes: Escambia and Santa Rosa Counties. Local and national advertising that is placed on radio stations in the Pensacola MSA is aimed at reaching listening audiences in the Pensacola MSA, and other radio stations do not provide effective access to these audiences. Thus, if there were a small but significant and nontransitory increase in radio advertising prices within the Pensacola MSA, advertisers would not switch enough advertising time purchases to render the price increase unprofitable.

20. Thus, the Allentown, Denver, Harrisburg, Houston, and Pensacola MSAs are each relevant geographic markets within the meaning of Section 7 of the Clayton Act.

C. Harm to Competition

21. Clear Channel's market share in each Overlap Radio Area will exceed 41 percent, and in some markets will exceed 69 percent, after the merger. Using a measure of market concentration called the Herfindahl-Hirschman Index ("HHI"), explained in Appendix A annexed hereto, concentration in each of these markets will increase significantly as a result of the merger, and will range from 2262 to 6231 points, well above the 1800 threshold at which the Department normally considers a market to be highly concentrated.

22. Advertisers who use radio to reach their target audience select radio stations upon which to advertise based upon a number of factors including, *inter alia,* the size of the station's audience and the characteristics of its audience.

23. Many advertisers seek to reach a large percentage of their target audience by selecting those stations whose audience has a high correlation with their target audience. If a number of stations efficiently reach that target audience, advertisers benefit from the competition among such stations to offer better prices or services. Today, several Clear Channel and AMFM stations in the Overlap Radio Areas compete head-to-head to reach the same audiences and, for many local and national advertisers buying time in Overlap Radio Areas, they are close substitutes

for each other based on their specific audience characteristics. The merger would eliminate this competition.

24. During individual price negotiations between advertisers and radio stations, advertisers provide the stations with information about their advertising needs, including their target audience and the desired frequency and timing of ads. Radio stations thus have the ability to charge advertisers differing rates based in part on the number and attractiveness of competitive radio stations that can meet a particular advertiser's specific target needs.

25. During individualized rate negotiations, advertisers who desire to reach certain listeners can help ensure competitive rates by “playing off” AMFM stations against Clear Channel stations. Clear Channel’s merger with AMFM will end this competition. After the merger, such advertisers will be unable to reach their desired audiences with equivalent efficiency without using Clear Channel’s stations. Because advertisers seeking to reach these audiences would have inferior alternatives to the merged entity as a result of the merger, the merger would give Clear Channel the ability to raise prices and reduce the quality of its service on its stations in the Overlap Radio Areas.

26. *Lack of Any Likely Entry To Deter Clear Channel’s Ability to Harm Competition*. Non-Clear Channel/AMFM radio stations in the Overlap Radio Areas are unlikely to change their formats and are unlikely to attract those audiences in

sufficiently large numbers to defeat a price increase by the merged Clear Channel/AMFM stations. Successful radio stations are unlikely to undertake a format change solely in response to small but significant increases in price being charged to advertisers by a multi-station firm such as Clear Channel because they would likely lose their existing audiences. Even if less successful stations did change format, they would still be unlikely to attract enough listeners to provide suitable alternatives to the merged entity.

27. New entry into the Overlap Radio Areas would not be timely, likely or sufficient to deter the exercise of market power.

IV. OUT-OF-HOME ADVERTISING

A. Relevant Product Market

28. Out-of-home advertising companies, such as Clear Channel/Eller and Lamar, generate revenue from the sale of advertising space to local and/or national businesses that want to promote their products and services.

29. Advertisers select out-of-home advertising based upon a number of factors, including the size of the target audience (individuals most likely to purchase the advertiser's products or services), the traffic patterns of the audience, as well as other audience characteristics. Many advertisers seek to reach a large percentage of their target audience by selecting out-of-home advertising forms, like billboards, that appear on highways, roads and streets where vehicle and pedestrian traffic is high.

This way, the advertisements will be viewed frequently by the advertiser's target audience.

30. Out-of-home advertising has prices and characteristics that are distinct from other advertising media. It is particularly suitable for highly visual, limited-information advertising, because consumers are exposed to an out-of-home advertisement for only a brief period of time. Out-of-home advertising is typically less expensive and more cost-efficient than other media at reaching an advertiser's target audience. Many advertisers who use out-of-home advertising also advertise in other media, including radio, television, newspapers and magazines, but use out-of-home advertising when they want a large number of exposures to consumers at a low cost per exposure.

31. For many advertising customers, out-of-home advertising has particular characteristics that make it an advertising medium for which there is no close substitute. Such customers would not switch to another advertising medium if out-of-home advertising prices increased by a small but significant and nontransitory amount.

32. Thus, for the purposes of analyzing this merger, out-of-home advertising constitutes a relevant product market within the meaning of Section 7 of the Clayton Act.

B. Relevant Geographic Market

33. Out-of-home advertising is typically offered on a localized, market-by-market basis rather than nationally or regionally. Much of the inventory (*e.g.*, leases for billboard space) is obtained on a local basis through contracts between out-of-home advertising firms and property owners. Firms that sell out-of-home advertising set prices based on local market conditions and employ local sales forces to sell out-of-home advertising.

34. Similarly, many advertisers need to reach consumers in a specific city, county, or metropolitan area. For those advertisers, advertising that targets consumers in a different local area is not an adequate substitute. Such advertisers may have their businesses located in a particular local area and therefore need to reach that area's consumers. Advertising outside the local area is also not an adequate substitute because most of the target audience may not even see the advertising.

35. Thus, the relevant geographic market within the meaning of Section 7 of the Clayton Act for out-of-home advertising is typically localized, often no larger than a city, county or metropolitan area, depending upon the characteristics of the particular geographic area. Clear Channel/Eller and Lamar compete in a number of markets across the United States, including the Atlanta, Georgia and Chicago, Illinois areas.

C. Harm to Competition

36. Clear Channel/Eller is one of only a few providers of out-of-home advertising services competing with Lamar in several markets across the United States. Upon consummation of the proposed merger between Clear Channel and AMFM, Clear Channel will have complete ownership and control of the assets and holdings of AMFM, including AMFM's approximate 28.6 percent equity interest in Lamar and influence over Lamar's operations and management.

37. Clear Channel's ownership of a significant equity interest in Lamar may substantially lessen competition in the areas in which Clear Channel/Eller and Lamar compete to provide out-of-home advertising. By acquiring a partial ownership interest in Lamar, Clear Channel will have a reduced incentive to compete against Lamar for out-of-home advertisers. This is because Clear Channel, as an owner of Lamar stock, will indirectly benefit when a customer chooses Lamar rather than Eller. Thus, as a result of its partial ownership in Lamar, Clear Channel's incentives, when it sets its out-of-home advertising prices, will be such that it will charge higher prices than it otherwise would.

38. Clear Channel's post-merger ownership in Lamar includes voting rights, Board representation, and certain other rights and therefore gives it the ability to directly or indirectly influence Lamar's business decisions, thereby lessening competition in out-of-home advertising.

39. Entry into the out-of-home advertising would not be timely, likely or sufficient to mitigate the competitive harm resulting from this merger.

V. VIOLATION ALLEGED

40. The proposed merger between Clear Channel and AMFM may lessen competition substantially in interstate trade and commerce, in violation of Section 7 of the Clayton Act.

41. Unless restrained, the merger would have the following effects, among others:

a. competition in the sale of advertising time on radio broadcast stations in the Overlap Radio Areas would be substantially lessened;

b. actual and potential competition between Clear Channel and AMFM radio stations in the sale of radio advertising time in the Overlap Radio Areas would be eliminated;

c. the prices for advertising time on radio stations in the Overlap Radio Areas would likely increase, and services would likely decline;

d. competition in the business of out-of-home advertising would be substantially lessened;

e. actual and potential competition between Clear Channel/Eller and Lamar in the business of out-of-home advertising will be substantially lessened; and

f. the prices for out-of-home advertising would likely increase, and services would likely decline.

VI. REQUESTED RELIEF

42. The United States requests (a) adjudication that Clear Channel's merger with AMFM would violate Section 7 of the Clayton Act; (b) preliminary and permanent injunctive relief preventing the consummation of the proposed merger; (c) an award to the United States of the costs of this action; and (d) such other relief as is just and proper.

Dated this 29th day of August, 2000.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES

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APPENDIX A
DEFINITION OF "HHI"

The term "HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2,600$). The HHI takes into account the relative size and distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 are considered to be moderately concentrated, and markets in which the HHI is in excess of 1800 points are considered to be highly concentrated. Transactions that increase the HHI by more than 100 points in highly concentrated markets presumptively raise significant antitrust concerns under the Department of Justice and Federal Trade Commission 1992 Horizontal Merger Guidelines.